

RECORDER ) Duty of Recorder of Deeds to record marriage certificates.  
MARRIAGE )

November 29, 1949

Honorable Joseph M. Bone  
Prosecuting Attorney  
Audrain County  
Mexico, Missouri



Dear Sir:

We have received your request for an opinion of this Department, which request is as follows:

"A marriage license was issued by the Recorder of Audrain County, Missouri on July 25, 1949. The Certificate of the Minister accompanying the return of this license to the Recorder of Audrain County, Missouri shows that on the face of the Certificate that the ceremony was performed on the 3rd day of September, 1949.

"The question raised by the Recorder of this County is whether or not he is authorized to record the same in view of Section 34 of the "Uniform Vital Statistics Act" appearing in Volume 1 of the Laws of Missouri for 1947 at Page 246, which requires every person who performs a marriage ceremony to return and file said certificate with the Recorder of Deeds in the County of issue within ten days after such ceremony of marriage has been performed.

"At the bottom of the Marriage Certificate appears the following printed statement:

"'If not used, this certificate shall be void after Ten (10) days from the date of issuance.'

"Section 34 of the Laws for 1947, Page 246, Volume II is in apparent conflict with Sections 3367 and 3368, Revised Statutes of Missouri

for 1939 in that these sections provide that said certificate shall be returned within ninety days from the date of issue of said license; and no where does the Statutes provide that in any event that the license shall be void. The Recorder of this County has raised the following questions on the above stated facts:

"1.-That whether the return of the officiating Minister or officer on the face of the certificate shows that said marriage was performed at a period of time greater than the Ten days provided in Section 34, Laws 1947, Page 246, Volume 1, whether the Recorder is legally authorized to record said Certificate?

"2.-Whether or not the ten days provided for in Section 34 Supra, is in conflict with the provisions of Sections 3367 and 3368 of the Revised Statutes of the State of Missouri for 1939?

"3.-Whether under either provisions, if the license is not used within the required time whether said license is void?

"Another situation arised relative to marriage license in this County wherein a license is issued by the Recorder of this County and the marriage is performed outside of the State; to wit: in the State of Illinois and said certificate is returned. If such license is valid under the Laws of Missouri, what is the Recorder's duty relative to recording the returned certificate?"

We enclose herewith copies of two opinions of this Department bearing upon your questions. The one dated August 2, 1946, and addressed to Mr. Alfred Moeller, Prosecuting Attorney of Ste. Genevieve County, concludes that a marriage is not rendered void by reason of the fact that the marriage ceremony is performed more than ten days after the date of the issuance of the license therefor. That opinion deals with Section 3364-a, Laws of 1943, page 641, which provides that a marriage license shall be void after ten days from the date of issuance.

The second opinion is dated May 15, 1944, and is addressed to Mrs. Ruby Koelling, Recorder of Deeds, City of St. Louis, Missouri. That opinion deals with the duty of the recorder in respect to recording marriage certificates which show on their face that the ceremony was performed outside the State of Missouri or more than ten days from the date of issuance of the license. It concludes that in either event it is the duty of the recorder to record the marriage certificate, his duty otherwise in such matters being limited by Section 3367, R. S. Missouri, 1939, to certifying to the Grand Jury the names of persons solemnizing marriages who fail to return the certificate within ninety days after its issuance.

The only additional statutory enactment subsequent to those opinions and possibly affecting them is Section 34 of the Uniform Vital Statistics Act referred to in your letter and found Laws of 1947, Volume II, at page 237, 246. That section provides:

"Every person who performs a marriage ceremony shall prepare and sign a certificate of marriage in duplicate one of which shall be given to the parties and the other filed by him within ten days after the ceremony with the officer who issued the marriage license. Every officer who issues a marriage license shall forward to the state registrar on or before the 15th day of each calendar month a list of the certificates of marriage which were filed with him during the preceding calendar month on forms to be furnished by the state registrar."

Nowhere in that Act is the recorder prohibited from recording a certificate which is not returned to him within the ten day period. Section 38 (3) of the Act imposes a penalty of a fine of not more than \$100.00 upon any person who neglects to perform any duties imposed upon him by the Act. The person who performed the ceremony and omitted to return the certificate within ten days thereafter might be liable to such a penalty, but that does not involve the duties of the recorder. Certainly the status of the parties to the marriage should not be affected by the failure of the person performing the ceremony to return the certificate within the prescribed time.

As to whether or not Section 34 of the Uniform Vital Statistics Act is in conflict with Section 3367, R. S. Missouri, 1939, we think it unnecessary to consider inasmuch as it is our view that the duty

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of the recorder is not affected thereby. We might point out that Section 3367 deals with the time following the issuance of the license within which the license must be returned, whereas Section 34 deals with the time following the performance of the ceremony.

CONCLUSION

Therefore, it is the opinion of this Department that it is the duty of a recorder of deeds to record a marriage certificate filed with him without regard to the time which has elapsed since the issuance of the license, or the time which has elapsed since the performance of the ceremony, or the fact that the marriage was performed in another state.

Respectfully submitted,

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APPROVED:

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Attorney General